

**Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**November 6, 2007 Minutes**

**Present: Raymond Arsenault, Arthur Russo, John Bart, Jina Karampetsos, Kristen Rao, David Gobeille, Town Solicitor Anthony DeSisto and Russell Hervieux, Zoning Official.**

### **Minutes**

**Motion made by Member John Bart to accept the October 2, 2007 Minutes as presented. Motion seconded by Member David Gobeille. Motion approved unanimously.**

### **Applications**

**Richard & Claudette Fuller, 4 Kennedy Boulevard, Lincoln, RI – Dimensional Variance application seeking rear yard setback for the construction of an addition.**

**AP 34, Lot 210 Zoned: RS 20**

**Russell Hervieux, Zoning Official, stated that he did have one notice issue regarding the St. Ambrose Church where the mailing was sent out to the right street address but should have been sent to Albion, RI. Mr. John Shekarchi stated the applicant was able to get actual notice. A letter was filed and submitted to record (Exhibit 1). Solicitor DeSisto looked over Exhibit 1 and advised Chairman**

**Arsenault that they could proceed.**

**Witness:**

**John Shekarchi, Esquire, 132 Old River Road, Lincoln RI.**

**He stated that the Fullers have lived in their home since 1991. It is their intent to add a 28 X 24 ft. addition to their existing home so that they may remain there instead of selling their home and moving. The Fullers' deteriorating health requires them to only remain on the first floor.**

**Witness:**

**A motion was made to accept Mr. Pimentel as an expert witness in Land Use and Planning by Member Bart and was seconded by Member Rao. Motion approved unanimously.**

**Edward Pimentel, 26 Avon Road, Cranston RI.**

**Mr. Pimentel presented a summary of qualifications and resume and was submitted to record (Exhibit 2).**

**Mr. Pimentel states that the property has a rather steep grade. The addition cannot be located in the back right rear of the home due to the location of the septic system. Given the existing layout of the structure, the uniqueness of the land with its grades, trying to meet the applicants' needs, he feels this is the best location for the addition and this will seek the least amount of relief. The rear yard deviation is approximately 13 ½ ft. He does not see that there would be a potential impact on any of the neighbors. The neighbors are situated a good 75-100 ft. away. The Technical Review Committee**

recommended putting the proposed addition on the left side of the house but Mr. Pimentel stated that would clearly incur side yard deviation of greater magnitude than rear yard. This location of the addition will also keep the home in the same architectural theme as the other homes in the neighborhood.

**Witness:**

A motion was made to accept Mr. Bleyer as an expert in residential home design by Member Rao and was seconded by Member Karampetsos. Motion approved unanimously.

Christopher Bleyer, 256 Farnum Pike, Smithfield RI.

He has drawn the plan with the applicants and is very involved with the placement of the addition.

He states you need to take into consideration the width of the house and the width of the lot. If you were to add the addition to the left side of the garage it would look like a two family or an in-law apartment. The next place you look to add an addition is to the back of the house and one side of the house has an existing septic system, so the natural place to add this addition is to the back of the garage. He feels that the master bedrooms for a handicap person work best if they are located next to the garage. He also feels that it will look like a very natural addition. He also does not feel that the proposed location for the addition will alter the general character of the surrounding area. He feels that the addition would not fit in with the neighborhood if the addition was added on to the side of the garage.

**Member Rao asked about the existing living room and what would be involved in turning that room into the master bedroom and using the den for the living room. Mr. Bleyer stated that the den is generally a breezeway between the garage and kitchen and it would be too small to be used as a living room. She also questioned if the siding and roofing would match the existing parts of the home and Mr. Bleyer stated “yes”. Member Rao questioned what would be underneath the master bedroom and Mr. Bleyer stated that the space would be used for storage only.**

**Member Russo proposed converting the garage into the proposed master bedroom suite and put the addition of a one car garage onto the existing garage. Mr. Bleyer feels that the existing size of the garage now would look very odd if you were to make it any bigger. He feels that there would be structural issues with putting an addition on a concrete slab. There would be concerns with moisture down the road if on a concrete slab. Mr. Bleyer also stated that a 12 ft. garage would not accommodate a handicap vehicle.**

**Witness:**

**Richard Fuller, 4 Kennedy Boulevard, Lincoln RI.**

**Mr. Fuller states that this addition is a real need. He loves Lincoln and the neighborhood and wants to make this his home permanently. His mother lived with him for the last 20 years of her life so he knows**

**from personal experience how hard it is to take care of some one and push them around in a wheel chair of a house that is not handicap accessible.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and applications. The Planning Board recommends Denial of the application for a dimensional variance. The Board feels that the application does not meet the standards for relief of a dimensional variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application do not represent the least relief necessary. The Board feels that the applicant has sufficient room to the left side of the property to locate some of the addition without having to request a variance. The Planning Board feels that the dimensional variance will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**Motion made by Member Gobeille to approve the application for a 13.66 ft. rear setback on AP 34, Lot 210.**

- The hardship is due to the unique characteristic of the land and not due to the physical or economical disability of the applicant. There is a septic system on the northwest side in the back yard and the grade of land is hilly.**

- The hardship is not the result of any prior action of the applicant and does result primarily from the desire to realize financial gain. The applicants stated they would like to remain in Lincoln and are preparing for their future.
- The granting of this variance will not alter the general characteristics of the surrounding area. The request conforms with the purpose and intent of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.
- The relief requested is the least relief necessary.
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property.

Motion to approve seconded by Member Bart. Motion was approved unanimously.

A.F. Homes, LLC, PO Box 2312, Pawtucket, RI – Extension of Decision rendered by this Board on October 3, 2006 for property located on 90 Industrial Circle, Lincoln, RI.

AP 2, Lot 82 Zoned: MG 0.5

Witness: John Mancini, Esquire, 55 Pine Street, Providence, RI.

John Mancini represents the applicant and owner of 90 Industrial Circle, Lincoln.

He was present for a proposal that was before the board on October

3, 2006 for purposes of a use variance in order to convert an existing industrial property from the use of commercial and industrial to the use of residential. This would allow for the construction of 48 condominium units. That proposal received a use variance from the Board at that time and then proceeded to the Planning Board for a land develop project review and approval. A master plan approval was dealt to this project. Due to the lengthy process of obtaining the necessary approvals they have not been able to commence construction within the one year of the time of the variance. He feels they will be able to come back to the Board within 2 to 3 months.

The only approval that is pending is a final review from the Planning Board and that is pending based upon a clarification from the D.E.M. in regards to a lands use restriction.

Member Rao asked Mr. Mancini if he thought that another extension would be filed in the future and Mr. Mancini said he said they will not be seeking another extension to the extension within the next year.

Chairman Arsenault read into the record Planning Board recommendations:

This Special Use Permit to construct 48 residential units was rendered by the Zoning Board on October 3, 2006. The applicant is requesting a one year extension of this permit. The Planning Board reviewed the submitted application and recommends Approval of this request. As stated in the application, the applicant has been working diligently to obtain RIDEM permits necessary to proceed to the next

**phase in the Planning Board approval process.**

**Motion made by Member Russo to approve the extension of this application one year from this date.**

**Motion to approve seconded by Member Karampetsos. Motion was approved unanimously.**

**John Bigonette, Jr., 290 Albion Road, Lincoln, RI – Dimensional Variance seeking side yard setback for the construction of a garage.  
AP 31, Lot 206 Zoned: RS 20**

**Witnesses:**

**Kim Bigonette, 290 Albion Road, Lincoln, RI**

**John Hoyle Jr., 1052 Great Road, Lincoln, RI. Principal of Limerock Associates.**

**Russell Hervieux, Zoning Official, states that under the code §260-28(B) the applicants would also be required to file for two other variances. One is having an accessory structure in the front yard and the second having an accessory structure over the height of 15 ft. He wants it to be on record that there should be 3 variances.**

**Mr. DeSisto is concerned with the fact that there are 2 variances that were not advertised and an objector could come forth later and cause problems for the applicant.**



**Mr. Hoyle feels that the reporting requirements and advertising requirements stating that the Bigonettes' are seeking the relief from this part of the ordinance should be satisfied.**

**Mr. DeSisto feels that the Board not only has a duty to the abutters, but also to the applicants. He feels that there is a defect as to notice and it would be in the applicants' and Board's best interest to ask for a continuance.**

**Chairman Arsenault read into the record Planning Board recommendations:**

**The Planning Board would like to bring to the attention of the Zoning Board that an additional variance would be required for this proposal.**

**The Board feels that a variance is needed from §260-28(B) in addition to the dimensional variance. Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board could not make a recommendation due to the limited information provided in the submission. Therefore, the Planning Board could not conduct a proper evaluation of the application.**

**A motion was made to continue the application to the December 4, 2007 meeting made by Member Gobeille.**

**Motion seconded by Member Rao to continue the application. Motion was approved unanimously.**

**Krzysztof Puzanowski, 69 Division Street, Lincoln, RI – Dimensional Variance seeking height relief for property located at 15 Red Brook Crossing, Lincoln, RI.**

**AP 26, Lot 258 Zoned: RA 40**

**Witness:**

**John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI.**

**Russell Hervieux, Zoning Official, notified the Board of a notice issue on Plat 26 Lot 246. Mr. Shekarchi handed in a certification of notice (Exhibit 1), for AP 26, Lot 246. Apparently, two different addresses are listed with the Town for this lot. They sent notice to a Massachusetts address and to the physical address of the home. They met with the owner of that particular property and he will testify, if needed. Mr. DeSisto agreed that they can continue with that waiver.**

**Mr. Shekarchi submitted into record an actual color photo of the subject site, (Exhibit 2). This photo shows how the applicant has finished the roof to a certain level. A site plan is also submitted as (Exhibit 3). The site plan is listed as a class 3, but should be a class 1. Mr. Shekarchi is certain that this is a class 1 despite what it says on the plan. The current owner and the former owner did not intentionally build a home higher than what it was allowed. He feels that it was an oversight on their part and the Town. The home currently has a building permit based on this property. It was simply a mistake and the builders and Town employees should have been more diligent. Other homes that currently have CO's are also above**

the current height requirements. The home was issued a valid building permit on March 4, 2003 and notice of any issue did not occur until November 10, 2006. If the owner was required to cut off the roof at 35 ft. and rebuild it at that height he would have costs of up to \$50,000 to fix this. Mr. Shekarchi submitted to record (Exhibit 4), which are the actual plans that were used to obtain the building permit. Also submitted to record (Exhibit 5), a vertical survey which shows that several surrounding homes are also above the height requirement. The as-built plans do not match the original plans that were approved. The house is higher and larger in foot print in the as-built plans. They are asking for a height relief of 8 ¼ ft.

**Witness:**

A motion was made to accept Mr. Degregorio as a Real Estate Expert by Member Karampetsos and was seconded by Member Gobeille.

Robert Degregorio, 1229 Branch Ave., Warwick, RI.

Submitted into record were his resume and education and licenses as (Exhibit 6).

He examined the site and the neighborhood. Noted it is a very upscale neighborhood with a very rolling topography. It is hard to determine whose house is higher due to the topography of the land. All of these houses have peaks throughout the neighborhood. He feels that the house conforms to the neighborhood. He also feels that if the roof were to be cut and become a flat roof, the house would not blend in with its' surroundings and become an eyesore. He also feels that it would detract from the value of the house and the surrounding

homes if it were changed. He also feels that they are asking for the least relief necessary.

**Witness:**

A motion was made to accept Mr. Pimentel as an expert in Land Use and Planning by Member Bart and was seconded by Member Rao.

Edward Pimentel, 26 Avon Road, Cranston, RI.

Mr. Pimentel created a detailed report which was submitted to record (Exhibit 7). He asked a surveyor to go out and do a random sampling of homes in the neighborhood. Found that certain colors are unable to be picked up by the instrument used to determine the height of the homes. The average height of homes in the area are between 40 ½ ft. to 41 ft. There are excessive grade changes which makes it more difficult to determine what the as-built height was for these homes. CO's were issued for these homes regardless. He also feels that the house is not out of proportion to the lot in regards to the homes. He feels that the hardship of deviation was not intentional and they are asking for the least relief necessary. Even though the as-built home is larger in foot print size than the initially approved site plan they still comply with all the setbacks. The only deviation is with the height relief. He feels it is clearly not an issue of greater financial gain as well. From his perspective he is looking at a 3 ft. deviation.

**Witness:**

**Krzysztof Puzanowski, 69 Division Street, Lincoln, RI.**

**Mr. Puzanowski submitted a letter from 6 of the abutters of the property who are in agreement with the height of the home, (Exhibit 8). He was always on the job site while his partner was responsible for the paper work and dealing with the customers. Mr. Puzanowski and his partner separated and he received the house. Submitted to record a written estimate from Mr. Puzanowski's company to show how much it would cost to remove the roof, (Exhibit 9). The estimate shows \$48,600.00 to change the roof. Mr. Puzanowski states that he just followed the plans that his partner presented to him. He was not aware that the second set of plans was not approved.**

**Member Russo asked Mr. Puzanowski if since November 6, 2006 worked has ceased on this property and Mr. Shekarchi stated that the Town told them they could work on the home as long as they did not go beyond the 35 ft.**

**Chairman Arsenault read into the record Planning Board recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of the application for a dimensional variance. The Board feels that the application does not meet the standards for relief of a dimensional variance as presented in the Zoning**

**Ordinance. The Planning Board feels that the dimensional variance will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**Motion made by Member Karampetsos to approve the application for AP 26, Lot 258.**

- The hardship is due to the unique characteristic of the land and not due to the physical or economical disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does result primarily from the desire to realize financial gain.**
- The granting of this variance will not alter the general characteristics of the surrounding area. The request conforms with the purpose and intent of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property.**

**Motion to approve seconded by Member Russo.**

**Amended motion to include that as a condition of approval an actual site and development plan is delivered to both the Planning and Zoning Officials. The amended motion was approved unanimously.**

**Michel Boutros, 180 Old River Road, Lincoln, RI – Special Use Permit for the construction of a two-family home.**

**AP 34, Lot 461 Zoned: RL 9**

**Witness:**

**Michel Boutros, 180 Old River Road, Lincoln, RI.**

**Mr. Boutros is requesting a special use permit to construct a two-family home for himself and his immediate family. A two-family is permitted under a special use permit in this zone. Mr. Boutros is proposing a one level raised ranch home, side by side. Approximate cost is around \$800,000. There will be two 2 car garages with a porch in between. The property will be landscaped. Water and sewer are on this road. Member Russo questioned if the sliding glass doors were coming out of the rear of the house and Mr. Boutros answered that that is the side of the house, and not the rear. Member Rao is questioning how the driveways are going to be placed on the property. Mr. Boutros stated there will be two separate driveways going out to Old River Road. She feels it would be safer if there were only one driveway. Russell Hervieux stated that a Physical Altercation Permit would be required from the State which shows that the driveway should be T-Shaped so cars do not back out onto the road.**

**Chairman Arsenault read into the record Planning Board recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of the application for a Special Use Permit. The Board feels that the application successfully addressed the requirements of a special use permit. The property is zoned for this type of use and the proposed housing development is consistent with the surrounding neighborhood. The area is made up of single and two family houses. The Planning Board feels that this proposal will be consistent with the area and consistent with the goals and objectives of the Comprehensive Plan.**

**Witness:**

**Jean Antaya, Lincoln, RI.**

**He testified that he is in favor of the Special Use Permit..**

**Russell Hervieux received two letters in the mail opposing the construction of a two family home. One letter states that the neighborhood is predominantly single family homes and they are asking for a variance. This not a request for a variance, it is a request for a Special Use Permit. The second letter is from the owners of 226 Old River Road and they feel that a two family house would not benefit the area, but the property is located on an area that is zoned for a two family home. Both letters were submitted to the Chairman for the Board's consideration.**



**Witness:**

**Mariola Pawul, Old River Road.**

**She wants to make sure that Mr. Boutros will bring in enough fill to prevent flooding on her property. Russell Hervieux, Zoning Official, stated that as part of the building permit, the Engineering Dept. will look into it and make sure that this happens.**

**Motion made by Member Gobeille to approve the application for a Special Use Permit on AP 34, Lot 461.**

- The use is permitted in subsection 260-9 B. This Special Use Permit meets all criteria for the Lincoln Zoning Ordinance, such as parking, lighting, and use and regulations.**
- This Special Use Permit will not alter the general characteristic of the neighborhood.**
- This Special Use Permit conforms to comprehensive planning and zoning ordinances.**

**Motion to approve seconded by Member Bart. The motion was approved unanimously.**

**Leroy & Adele Cooney, 29 Maria Street, Lincoln, RI – Dimensional Variance seeking rear yard setback for the construction of a two-car garage.**

**AP 21, Lot 58 Zoned: RS 12**

**Witnesses:**

**Leroy & Adele Cooney, 29 Maria Street, Lincoln, RI**

**They would like to construct a two stall garage, 24 X 28 ft. They are also seeking a 13 ft. variance. They have a trapezoid shaped lot. On their property they have a 10 ft. buffer that belongs to the Town (Sewer). The setback is 32 ft. and requires 45 ft. in that zone.**

**Member Rao questioned if the siding and roofing and color are going to match the house and Mr. Cooney said that they will all match.**

**Chairman Arsenault read into the record Planning Board recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of this application. The Board feels that the shape of the existing residential lot and building envelope limits that the location in which an owner can locate a garage. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the neighborhood. The Planning Board feels that this proposal will be consistent with the area and consistent with the goals and objectives of the Comprehensive Plan.**

**Motion made by Member Rao to approve this application for**

**dimensional variance for 13 ft. rear yard relief on AP 21, Lot 58.**

- The hardship is due to the unique characteristic of the land and not due to the physical or economical disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does result primarily from the desire to realize financial gain.**
- The granting of this variance will not alter the general characteristics of the surrounding area. The request conforms to the purpose and intent of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property.**

**A motion to approve seconded by Member Gobeille. The motion was approved unanimously.**

**A motion to adjourn was made by Raymond Arsenault, seconded by David Gobeille. The motion was approved unanimously.**